

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

BANKUNITED N.A.,

Plaintiff,

V.

ASD KITCHEN, INC., AULLAH S. DARWISH,
SAM M. DARWISH, SKINNY IT CORP., AND
RAJESH P. PADOLE,

Defendants.

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Civil Action No. 4:18-cv-804-ALM

PLAINTIFFS' MOTION FOR ENTRY OF DEFAULT JUDGMENT

Plaintiff, BankUnited, N.A. (“Plaintiff” or “BankUnited”), asks the Court to enter a default judgment against Defendant ASD Kitchen, Inc. (“Defendant” or “ASD Kitchen”) as authorized by Federal Rules of Civil Procedure 55(b).

A. INTRODUCTION

1. Plaintiff is BankUnited, N.A.
2. On November 9, 2018, BankUnited sued ASD Kitchen for breach of contract. *See* Doc. 1.
3. On November 13, 2018 the Clerk of Court issued a summons in this action to ASD Kitchen to be served upon its registered agent Sam Darwish. *See* Doc. 4.
4. On August 9, 2019 ASD Kitchen, through counsel for Sam Darwish, its registered agent, waived service of the summons and complaint. *See* Doc. 37. A copy of the Waiver of Service of Summons is attached as Exhibit 1 to the Affidavit of Cameron J. Asby (“Asby Aff.”).
5. ASD Kitchen’s responsive pleadings were due by October 8, 2019. To date, ASD Kitchen has not filed a responsive pleading or otherwise defended the suit.

6. On October 10, 2019, the clerk entered a default against ASD Kitchen. *See* Doc. 49. A copy of the entry of default is attached as Exhibit 2 to the Asby Aff.

7. BankUnited now asks the Court to enter a default judgment against ASD Kitchen.

B. ARGUMENT

8. The Court may render a default judgment against a party who has not filed a responsive pleading or otherwise defended the suit. *See* FED. R. CIV. P. 55(a), (b)(2); *United States v. \$23,000 in U.S. Currency*, 356 F.3d 157, 163-64 (1st Cir. 2004).

9. The Court should enter a default judgment against ASD Kitchen because ASD Kitchen did not file a responsive pleading or defend the suit within 60 days of August 9, 2019, the date of service. FED. R. CIV. P. 12(a)(1)(A)(i); FED. R. CIV. P. 55(a).

10. BankUnited meets the procedural requirements for obtaining a default judgment from the Court as demonstrated by the Affidavit of Cameron J. Asby, attached as Exhibit A. BankUnited has established that ASD Kitchen waived service of summons and failed to answer by October 9, 2019. BankUnited has previously requested and been granted a default against ASD Kitchen. *See* Asby Aff. at Exhibit 2.

11. ASD Kitchen is not a minor or an incompetent person. FED. R. CIV. P. 55(b)(2).

12. ASD Kitchen is not in military service, a member of the military, the U.S. government, or a federal officer or agency. *See* 50 U.S.C. app. §521(b)(1). An Affidavit of Defendant's military status is attached as Exhibit B.

13. Because ASD Kitchen did not file a responsive pleading or otherwise defend the suit, Defendant is not entitled to notice of entry of default judgment. *Franchise Holding II, LLC*, 375 F.3d at 927.

14. BankUnited seeks liquidated damages in the amount of \$1,742,490.62 as established by the Declaration of Justin Garcia attached as Exhibit C.

15. BankUnited requests that upon entry of a default judgment against ASD Kitchen, the Court set a briefing schedule so that ASD Kitchen may present evidence in support of its claim for reasonable and necessary attorney's fees.

C. CONCLUSION

Plaintiff requests that the Court grant its request for entry of a default judgment against Defendant ASD Kitchen, Inc., in favor of Plaintiff.

Filed: October 30, 2019

Respectfully submitted,

DUANE MORRIS LLP

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**ATTORNEYS FOR PLAINTIFFS
BANKUNITED N.A.**

CERTIFICATE OF SERVICE

I certify that on October 30, 2019, Plaintiffs' Motion for Entry of Default Judgment was served on all counsel via the Court's electronic filing system.

/s/Cameron J. Asby _____
Cameron J. Asby